

**FILED**

**Lucinda B. Rauback, Clerk**  
**United States Bankruptcy Court**  
**Augusta, Georgia**  
*By mfox at 4:53 pm, Oct 07, 2016*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF GEORGIA  
AUGUSTA DIVISION

IN RE:

CASE NO. 14-12297 SDB

## CHAPTER 7

SCIENCE FITNESS, LLC

Debtor

JOY R. WEBSTER, TRUSTEE

Plaintiff

ADVERSARY PROCEEDING

No.:16-01034

V.

EVANS FITNESS CLUB EXPRESS, LLC

Defendant

ADVERSARY PROCEEDING

No.:16-01035

EVANS PLAZA PARTNERS, LLC

Plaintiff

v.

JOY WEBSTER, CHAPTER 7  
TRUSTEE, EVANS FITNESS CLUB  
EXPRESS, LLC  
Defendants.

**ORDER**

For the reasons set forth on the record at the hearing held October 6, 2016, it is hereby ORDERED as follows:

1. Evans Fitness Club, Express, LLC (hereinafter “Express”) and Evans Plaza Partners, LLC (hereinafter “Landlord”) agree to store the following disputed items on the Leased Premises: lockers, mirrors, television mounts, sauna equipment, and mats not expressly included on Exhibit A, and as to be fully defined by the designation of disputed items by October 11, 2016 pursuant to the Order Denying Motion to Abstain and Enjoining Express (Docket No. 19) (“Contested Items”) and that Express, will be responsible for the physical relocation of the items to a location within the Leased Premises of the Landlord’s choosing.

2. The parties agree that the physical relocation of the items will be concluded on or before 6:00 pm on October 7, 2016.

3. The parties agree that a representative from Express, the Trustee and Landlord will have access to the facility during the relocation by Express and that after the items have been relocated to the designated storage location each party shall have the right to itemize the Contested Items and document the condition of the Contested Items so moved.

4. Any actions, or inactions in complying with this Order shall not be deemed an abandonment by Express of the Contested Items.

5. Any actions or inaction in complying with this Order shall not be deemed abandonment by Express of its claim to any damages related to the Contested Items, to include any cost associated with the value of such items in the event that Express is ultimately successful in its challenge for the contested items.

6. Any actions or inaction in complying with this Order shall not be deemed abandonment by the Landlord of its right to any damages due under the Lease including, but not limited to, rent and the current value of the Contested Items, to include any cost associated with the return of such items to the condition they were in before removal from the Leased Premises in the event that Landlord is ultimately successful in its claim.

7. The Landlord is entitled to any damages arising from the removal and subsequent reinstallation of the water heater, if any such damage exists.

8. Further Landlord and Express agree there is a dispute over the Contested Items, and further agree that damages for injuries arising out of the dispute of the Contested Items shall, notwithstanding any other provisions of this Order to the contrary, damages shall not include the cost and expenses of renovation, remodel, improvement, or other like and similar costs which arise out of the Landlord, his agents or representatives, or tenants from improving the Lease Premises.

9. The Trustee, will turn over the keys to the Landlord its agent or representative at 6:00pm on Friday October 7, after which time, no other party has the right to enter such premises without the express permission of the Landlord or this Court.

So ordered this 7<sup>th</sup> day of October, 2016.



Honorable Susan D. Barrett  
Chief United States Bankruptcy Court Judge

(signatures on next page)

Order prepared by:



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Order consented to by:

  
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/s/ Joy R. Webster

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